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GREGORY C. HOUGHTON
NOVARTIS CORPORATE
INTELLECTUAL PROPERTY
ONE HEALTH PLAZA 104/3
EAST HANOVER NJ 07936-1080

In re Patent No. 6,878,721 :
Applicant CUENOUD, et al :
Application No. 10/009,008 : DECISION ON APPLICATION
Filed: January 8, 2002 : FOR
Atty Docket No. 4-30970A : PATENT TERM ADJUSTMENT
:

This is a decision on the "Request for Reconsideration of "Final" Patent Term Adjustment under 37 CFR 1.705(d)" filed May 24, 2005. Patentees request that the patent term adjustment indicated on the face of the Letters Patent be corrected from ninety-four (94) days to one hundred thirty (130) days.

The request for reconsideration of the patent term adjustment indicated in the patent is **GRANTED**.

The patent term adjustment indicated in the patent is to be corrected by issuance of a certificate of correction showing a revised Patent Term Adjustment of one hundred thirty (130) days.

On April 12, 2005, the above-identified application matured into U.S. Patent No. 6,878,721, with a revised patent term adjustment of 94 days. The instant request for reconsideration filed on May 24, 2005 was timely filed within 2 months of the date the patent issued. See §1.705(d).

Patentees assert that the period of adjustment for failure to issue a patent within three years under 37 C.F.R. 1.702(b) was incorrectly calculated at 94 days using the 35 U.S.C. 371 fulfillment date of the international application instead of the 130 days using the 35 U.S.C. 371(b) national stage commencement date of the international application.


Patentees' contention is well taken. A review of the file record indicates that the three year failure to issue a patent calculation pursuant to 37 C.F.R. 1.702(b) should have used the 35 U.S.C. 371(b) national stage commencement date of December 3, 2001 which would result in an adjustment of 130 days for examination delay.

In view thereof, the patent term adjustment indicated on the patent should be one hundred thirty (130) days.

The Office acknowledges submission of the \$200.00 fee set forth in 37 CFR 1.18(e). No additional fees are required.

The application file is being forwarded to the Certificates of Correction Branch for issuance of a certificate of correction in order to rectify this error. The Office will issue a certificate of correction indicating that the term of the above-identified patent is extended or adjusted by one hundred thirty (130) days.

Telephone inquiries specific to this matter should be directed to Amelia Au at (571) 272-7414.



Nancy Johnson
Senior Petitions Attorney
Office of Petitions

Enclosure: Copy of DRAFT Certificate of Correction

UNITED STATES PATENT AND TRADEMARK OFFICE
CERTIFICATE OF CORRECTION

PATENT : 6,878,721 B1
DATED : April 12, 2005
INVENTOR(S) : Cuenoud et. al.

It is certified that error appears in the above-identified patent and that said Letters Patent is hereby corrected as shown below:

On the cover page,

[*] Notice: Subject to any disclaimer, the term of this patent is extended or adjusted under 35 USC 154(b) by 94 days.

Delete the phrase "by 94 days" and insert – by 130 days--